IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5858 of 1988

For Approval and Signature:

HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RATANBEN R RAJGOR, - Petitioner(s)
Versus
STATE OF GUJARAT - Respondent(s)

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Appearance :
MR PM THAKKAR for Petitioner(s) : 1, 1.2.1, 1.2.2,1.2.3
MR HEMANT MAKWANA, ASST GOVERNMENT PLEADER for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

Date : 09/10/2007

ORAL JUDGMENT

1. The petitioner had to prefer this petition under Article 226 of the Constitution of India for seeking equal treatment which was accorded to similarly situated

employees and which was not extended to him by the State. The petitioner during the pendency of this petition passed away and therefore the legal heirs were permitted to be brought on record as per the order made in Civil Application No. 1485/89 on 08.09.89. Accordingly, the legal heirs of the petitioner are prosecuting this petition.

2. Few facts deserve to be narrated for appreciating the controversy in the matter:

2.1 The petitioner initially joined the services in the erstwhile State of Saurashtra on 04.02.49 as Junior Clerk and continued with the same State till reorganization of the States on 31.10.56. It is stated by the petitioner that on account of reorganization of the States in 1956, the petitioner was posted as Junior Assistant in a department in the new State of Bombay where he worked till 14.02.57. The petitioner was thereafter posted in the local audit department at Jamnagar under the Directorate of Accounts and Treasuries. As per the submission of the petitioner, the petitioner was working from 18.02.57 to 14.03.62 at Jamnagar and thereafter for the period between 15.03.62 to 18.02.64, the petitioner was given posting in the local audit department at Rajkot.

2.2 The petitioner thereafter came to be posted in the Regional Office, Rajkot on 19.08.64 and worked there till 09.02.65. He was then posted in the office of Rajkot Circle II from 10.02.65 to 03.09.66 after which the petitioner joined the District Office at Rajkot from 04.09.66 to 16.04.67. The petitioner was again posted in the Treasury Office at Rajkot from 17.04.67 to 09.10.67 and thereafter was posted in the office of the Development Commissioner, Ahmedabad for the period from 10.10.67 to 06.12.67. The petitioner was again sent to Rajkot Circle II with effect from 11.12.67 and worked there till 14.11.68 after which the petitioner was sent to the office of the Superintendent, Rajkot from 15.11.68 to 21.12.69. It is stated by the petitioner that thereafter he was posted in Rajkot Circle II where he continued till 18.06.72.

2.3 Thereafter on account of formation of State of Gujarat, the case of the employees of the former State of Saurashtra and Kachchh who were retained and absorbed in the district department instead of being absorbed in the Department of Secretariat was under consideration. It was then decided that such type of employees deserve to be absorbed in the Secretariat of the State Government. Ultimately, on 10.05.72, the State Government decided that under the States Reorganization Act, 1956, those employees should have been absorbed in the Secretariat

Department with retrospective effect from 01.11.56. The government resolution dated 10.05.72 is at page 72 of the memo of the petition. Accordingly, vide office order dated 11.05.72, the absorption orders were passed wherein the petitioner's name is shown at Serial No. 6. However, name of one more person namely Shri V.L Nakum is figuring at Serial No. 11.

2.4 The petitioner came to be posted in the Panchayat and Health Department in the scale of Rs. 120-250 whereas Mr. Nakum was posted in the Home Department as per the order dated 11.05.72. The concerned department issued order indicating the change in the scale in respect of the petitioner on account of amalgamation of cadres namely Junior Assistant and Senior Assistant according to which a common cadre of Assistant was created in the scale of Rs. 145-400 and the petitioner opted for being absorbed in the common cadre with effect from 01.10.64. Thereafter, the State by order dated 20.07.73, assigned the deemed date of promotion to Mr. Nakum to the post of Senior Assistant with effect from 28.09.61 i.e the date on which his Junior was promoted and his salary was accordingly fixed in the scale of Rs. 250-340. The petitioner has made grievance with various authorities for seeking equal treatment qua Mr. Nakum and therefore the present petition is filed.

3. Ms Vinita Vinayak, learned advocate appearing for Mr P.M Thakkar for the petitioner has submitted that the petitioner has been wrongfully denied the benefit of deemed date. Ms Vinayak has attempted to explain the delay in filing this petition on the basis of representations made by the petitioner to the authorities. She has submitted that the respondents have not filed any affidavit in reply controverting any of the averments made in this petition and therefore the petition deserves to be allowed.

4. Mr Hemant Makwana, learned AGP appearing for the State has resisted this petition. However, he has been candid enough to state before this Court that despite three letters addressed by him to the concerned departments no instruction has been received by him so far and therefore on the strength of the material available in this matter he has attempted to resist this petition. Except the ground of delay, Mr Makwana could not point out any justifiable reason fro not according the deemed date or equal treatment to the petitioner, more particularly, the treatment which was accorded to Shri Nakum in assigning the deemed dated.

5. This court has heard learned counsel for the parties and perused the relevant records. It is indeed unfortunate that in a matter pertaining to the year 1988,

learned AGP appearing for the State has to admit in the year 2007 that despite repeated requests no instruction has been received so as to clarify the stand of the government. Ms Vinayak has relied upon the decision of the Apex Court in the case of M.D Shukla vs. State of Gujarat reported in AIR 1971 SC 117 in support of her submission that after reorganisation of the States the absorbed government servants' services cannot be effected without due permission from the government department. It deserves to be noted that there is substance in the plea of delay raised by the learned AGP but the delay has been explained by the petitioner in the memo of the petition. It goes to show that the petitioner had never given up his cause for appropriate relief from the concerned authorities. The Under Secretary of the State had also addressed a communication on 03.05.79 to the Under Secretary, Gujarat & Maharashtra in respect of seniority etc. Looking to this kind of correspondence between the authorities it can well be said that the delay stands explained and thereby when the State has shown his inability to file any affidavit in reply controverting any of the submissions mentioned in this petition. This court is left with no choice but to allow the petition in absence of any averment controverting the facts mentioned in the petition. The court at the same time needs to be mindful about the long time lapsed between passing of the order dated 20.07.73 and the date

on which the petition is being disposed of. Bearing this time gap in mind in the interest of justice the following directions deserve to be issued which would go a long way in redressing the grievance of the heirs of the petitioner who have been brought on record. Accordingly, the present petition is disposed of with the following directions:

(i)The respondent State is hereby directed to pass speaking order justifying its stand as to why the petitioner could not have been granted the deemed date which was granted to Shri Nakum vide order dated 28.07.73. The speaking order that may be passed be sent by RPAD to the heirs of the petitioner whose address is available in the memo of the petition and it would be open to the heirs to challenge the said order in appropriate forum if so required.

(ii)The aforesaid order shall be passed within a period of six months from the date of receipt of this order.

(iii)Incase the state has no justification for granting the deemed date and the similar treatment to the petitioner then consequential benefits accruing on that basis shall be admissible and paid to the legal heirs of the petitioner within a period of one month from the decision.

With the aforesaid directions, this petition stands disposed of. Rule is made absolute to the aforesaid extent.

(S.R.BRAHMBHATT, J.)

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